IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5283 OF 1999

Chandrabai Bhima Tupsoundar & Ors. ..Petitioners.

V/s.

Arun Murlidhar Patil & Ors. ..Respondents.

Mr.R.S.Kate for petitioners.

None for respondents.

CORAM : R.V.MORE, J.

DATED : 19TH JUNE, 2007.

P.C. :-

. Heard Mr.R.S.Kate for the petitioners. None appears for the respondents though served.

2. Petitioners are the original plaintiffs in Regular Civil Suit No.268/99. The above suit was filed for declaration and permanent injunction. The petitioners filed an application at Exhibit 5 in this suit for temporary injunction in terms of permanent injunction against the respondents. The trial Court after hearing both sides, by its order dated 22nd June, 1999 allowed the petitioners' application Exhibit 5 in the aforesaid suit and the respondent Nos.1 & 2 were restrained temporarily from causing any obstruction or interfernce to the peaceful possession and cultivation

of the petitioners over the suit land.

3. The respondents being aggrieved preferred Misc. Civil Appeal No.55/99. Mr.Kate, learned counsel for the petitioners made a statement that during the pendency of this appeal, there was no stay to the temporary injunction granted by the trial Court. Misc. Civil Appeal was heard finally by the learned III Additional District Judge, Pandharpur and the same was allowed on 26th August, 1999. Consequently, the trial Court's order below Exhibit 5 in Regular Civil Suit No. 268/99 came to be set aside.

4. The petitioners being aggrieved preferred the aforesaid Writ Petition in this Hon'ble Court and after hearing both the sides, this Court was pleased to admit the aforesaid Writ Petition on 27th September, 1999 by passing the following order:-

> "Rule.
>
> Ad-interim order in terms of prayer (c). However hearing of RCS no.269 of 1999 pending before the Court of Jt.C.J.J.D. Malsiras to proceed. Liberty to the Respondents 1 and 2 to get this interim order vacated in case they succeed in appeal filed against the order dated 1-3-1999 passed by the C.J.S.D. Pandharpur in RCS No.82 of 1998.
>
> It is made clear that the learned Judge to decide the said appeal on its own merits and

without taking into consideration this order.

5. This Court at the time of admission of the Writ Petition granted ad-interim order in terms of prayer clause (c) and thereby stayed the order impugned in the petition. The learned Single Judge also directed that hearing of Regular Civil Suit No.269/99 (in fact it should be R.C.S.No.268/99) be proceeded. Mr.Kate, learned counsel for the petitioners is unable to state whether the said Regular Civil Suit No.268/99 is disposed of or not by the trial Court.

6. The trial Court granted temporary injunction in favour of the petitioners on 22nd June, 1999 and though this order was set aside by the Appeal Court on 26th August, 1999, stay was granted by this Court in the aforesaid Writ Petition to the order of the lower Appellate Court. In my opinion, instead of going into the merits of the matter, interest of justice will be served by directing the trial Court to dispose of Regular Civil Suit No.268/99 as expeditiously as possible and in any case within one year from the date of receipt of the order, if the same is not already disposed of and interim order granted in the Writ Petition is kept in force till then. In the facts and circumstances, the Writ Petition is disposed of by

passing the following order.

i. The Civil Judge, J.D. Malsiras is directed to hear and dispose of the Regular Civil Suit No.268/99 as expeditiously as possible and in any case within a period of one year from the date of receipt of this order, if the same is not already disposed of.

ii. The trial Court shall decide the suit independently on its own merit and without being influenced by the impugned or interim order in the petition.

iii. During the pendency of the suit, interim order granted by this Court in the aforesaid Writ Petition on 27th September, 1999 to remain in force.

iv. No order as to costs.

(R.V.MORE, J.)